

**(2014) 11 AP CK 0045**

**Andhra Pradesh High Court**

**Case No:** C.E.A. No. 120 of 2014

Reliance Cellulose Products Ltd.

APPELLANT

Vs

C.C.E., C. and S.T., Hyderabad

RESPONDENT

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**Date of Decision:** Nov. 20, 2014

**Citation:** (2015) 322 ELT 673

**Hon'ble Judges:** K.J. Sengupta, C.J ; Sanjay Kumar, J

**Bench:** Division Bench

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### **Judgement**

K.J. Sengupta, C.J.

1. Pre-admission notice has been issued. Learned counsel for the Revenue appeared today. We have heard Mr. S. Ravi, learned senior counsel appearing for the appellant.

2. The appeal is admitted on the following substantial questions of law:

a. Whether the learned Tribunal has misdirected itself not having considered the financial hardship of the appellant on the basis of material placed before it in terms of the direction of the Hon'ble Court?

b. Whether the learned Tribunal is correct in its assumption that the credit taken by appellant was required to be reversed while the amount did not represent any duty of excise as the debit and credit in the same account nullified each other without any gain to the appellant or loss to the Revenue?

3. Learned counsel for the Revenue waives service of notice of the appeal and he requests us to decide the appeal itself today finally. Since it is possible to do with the materials available and placed before us the same is disposed of today finally.

4. The assessee came before us in the past impugning the order dated 20-3-2014 passed by the learned Tribunal on the question of waiver of pre-deposit. We disposed of the appeal passing the orders following amongst others as follows.

"We direct the learned Tribunal, on the date fixed for hearing, to reconsider the matter by taking note of the fresh material produced before us, namely: the balance sheet for the year ending 31-3-2014, and decide the question of financial hardship on fact afresh. All points are kept open."

5. The learned Tribunal was thus asked to decide the issue of pre-deposit on account of the financial hardship taking note of the material which might be produced before it.

6. It appears from the record that fresh materials viz., audited balance sheet of the year ending 31-3-2014 were produced. From the impugned order, as rightly contended by the learned counsel, Mr. S. Ravi that the learned Tribunal has again decided the matter on prima facie case and refused to give any relief for waiver of pre-deposit. However, the financial hardship was not considered properly. Even decision taken on this aspect, by the learned Tribunal appears to be contrary to the records, namely, the audited balance sheet dated 31-3-2014. The learned Tribunal was of the view that had there been any financial hardship, it would have reflected from the books of accounts. The learned Tribunal has gone on recording that accounting is merely a paper transaction and it does not reflect the reality. We think overruling the contention of the learned counsel for the Revenue if any audited accounts are produced before the Court of law or Tribunal, accounting cannot be doubted. We fail to understand how the learned Tribunal could find that there has been a profit in a current year more than Rs. 13.00 crores. Rather, we notice from the profit and loss account that as on 31-3-2014, net loss of Rs. 110.80 lakhs. This finding is absolutely based on non-application of mind. We cannot accept this finding. We find that in this financial year there has been a loss. So, the company in all possibility is to face financial hardship. But, taking the entire accounting as a whole, it cannot be said that the company is absolutely without any means, to make some deposit.

7. Taking into consideration of the entire facts, we think that justice would be rendered in the event the appellant is directed to deposit an amount of Rs. 16.00 lakhs (Rupees Sixteen lakhs only) as pre-deposit and this shall be made within a period of fortnight from the date of receipt of a copy of this order. If such deposit is made within the above time, the appeal will be heard out by the learned Tribunal on merit as and when possible, failing which, the appeal before the Tribunal will automatically stand dismissed and this order will in that case, stand recalled.

8. The C.E.A. is accordingly disposed of. Consequently, pending miscellaneous applications, if any, shall stand closed. No order as to costs.